

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

DEC 03 2007

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellant,

v.

FEDERICO CERVANTES-GONZALEZ,

Defendant - Appellee.

No. 07-50076

D.C. No. CR-05-01643-H-1

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Southern District of California  
Marilyn L. Huff, District Judge, Presiding

Argued and Submitted November 7, 2007  
Pasadena, California

Before: FARRIS and PAEZ, Circuit Judges, and BLOCK,<sup>\*\*</sup> District Judge.

The United States appeals the district court's order granting Federico Cervantes-Gonzalez ("Cervantes-Gonzalez") a new trial.

---

<sup>\*</sup> This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> The Honorable Frederic Block, Senior United States District Judge for the Eastern District of New York, sitting by designation.

Cervantes-Gonzalez was tried for possession of cocaine with intent to distribute, in violation of 21 U.S.C. § 841(a)(1), and importation of cocaine, in violation of 21 U.S.C. § 952. After the jury returned its verdict, Cervantes-Gonzalez moved for a new trial on the ground that inappropriate conduct by a United States Marshal had prejudiced his trial. After considering the parties' briefing and oral arguments, the district court granted the motion. The Government timely appealed. We have jurisdiction under 28 U.S.C. § 1291. We affirm.

We review for abuse of discretion a district court's decision to grant a new trial pursuant Fed. R. Crim. P. 33(a), which provides that a "court may vacate any judgment and grant a new trial if the interest of justice so requires." *See United States v. Kellington*, 217 F.3d 1084, 1097 (9th Cir. 2000). "[A] court of appeals will only rarely reverse a district judge's grant of a defendant's motion for a new trial, and then only in egregious cases." *Id.* at 1097. This is not such a case. The district court acted well within its discretion in determining that a new trial was required.

**AFFIRMED.**